

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF NEW YORK

-----X DOCKET NO.: 21MC102 (AHK)
IN RE: LOWER MANHATTAN DISASTER SITE
LITIGATION

NOTICE OF APPEAL

-----X

PLEASE TAKE NOTICE that the plaintiffs represented by WORBY GRONER EDELMAN & NAPOLI BERN, LLP, hereby appeal to the United States Court of Appeals for the Second Circuit from the July 25, 2012 "Summary Order" entered in master docket 21MC102 and in the individual docket numbers listed on the annexed Rider "A": (document no: 4351 in docket 21MC102). Plaintiffs appeal from each and every part of the subject order.

Dated: New York, New York
August 16, 2012

WORBY GRONER EDELMAN & NAPOLI BERN, LLP
Counsel for Plaintiffs -Appellants



Denise A. Rubin (DR5591)
350 Fifth Avenue, Suite 7413
New York, New York 10118
Phone: (212) 267-3700

| # | Last | First | Docket | Counsel |
|----|-------------|---------------|-----------|------------------------------------|
| 1 | Acevedo | Carmelo | 07cv01453 | Worby Groner Edelman & Napoli Bern |
| 2 | Agudo | Claudio | 07cv04447 | Worby Groner Edelman & Napoli Bern |
| 3 | Alloggio | Anthony | 07CV04240 | Worby Groner Edelman & Napoli Bern |
| 4 | Bunay | Carlos | 07CV01571 | Worby Groner Edelman & Napoli Bern |
| 5 | Colucci | John | 07cv01485 | Worby Groner Edelman & Napoli Bern |
| 6 | Concepcion | Beatriz | 07CV01594 | Worby Groner Edelman & Napoli Bern |
| 7 | Daquila | Steven | 06cv08756 | Worby Groner Edelman & Napoli Bern |
| 8 | Datil | Leonor | 07cv01488 | Worby Groner Edelman & Napoli Bern |
| 9 | DeLucy | Louis | 07CV05285 | Worby Groner Edelman & Napoli Bern |
| 10 | Eramo | Joseph | 06cv14632 | Worby Groner Edelman & Napoli Bern |
| 11 | Fairweather | Robert | 07CV05408 | Worby Groner Edelman & Napoli Bern |
| 12 | Ferraro | Kenneth | 06CV12062 | Worby Groner Edelman & Napoli Bern |
| 13 | Hernandez | Maria Cecilia | 08cv05156 | Worby Groner Edelman & Napoli Bern |
| 14 | Higgins | James | 07CV05395 | Worby Groner Edelman & Napoli Bern |
| 15 | Johnson | Charles | 07CV05558 | Worby Groner Edelman & Napoli Bern |
| 16 | Kelly | Egerton | 06cv13971 | Worby Groner Edelman & Napoli Bern |
| 17 | Lombardi | John | 05CV01678 | Worby Groner Edelman & Napoli Bern |
| 18 | McPartland | Michael | 05CV01181 | Worby Groner Edelman & Napoli Bern |
| 19 | Mesa | Luis | 07CV05303 | Worby Groner Edelman & Napoli Bern |
| 20 | Orellana | Aurellio | 07CV01674 | Worby Groner Edelman & Napoli Bern |
| 21 | Pena | Luis | 05cv10741 | Worby Groner Edelman & Napoli Bern |
| 22 | Schmidt | Robert | 06cv10878 | Worby Groner Edelman & Napoli Bern |
| 23 | Tedaldi | Guy | 07CV05430 | Worby Groner Edelman & Napoli Bern |
| 24 | Torres | Javier | 08CV02725 | Worby Groner Edelman & Napoli Bern |
| 25 | Tucker | Jerome | 07CV05323 | Worby Groner Edelman & Napoli Bern |
| 26 | Vanbelle | Mark | 06cv11281 | Worby Groner Edelman & Napoli Bern |
| 27 | Vario | Thomas | 05CV01347 | Worby Groner Edelman & Napoli Bern |
| 28 | Vasquez | Camilo | 08CV02313 | Worby Groner Edelman & Napoli Bern |
| 29 | Vivar | Luis | 07cv04523 | Worby Groner Edelman & Napoli Bern |
| 30 | Wragg | Clarence | 06cv08125 | Worby Groner Edelman & Napoli Bern |
| 31 | Yaguana | Aquiles | 07cv04525 | Worby Groner Edelman & Napoli Bern |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| DOCUMENT | ELECTRONICALLY FILED |
| DOC #: | 7/25/12 |
| DATE FILED: | 7/25/12 |

IN RE WORLD TRADE CENTER LOWER
MANHATTAN DISASTER SITE LITIGATIONX
: **SUMMARY ORDER**
: **DISMISSING CASES**X
: 21 MC 102 (AKH)
:
:
:
X

ALVIN K. HELLERSTEIN, U.S.D.J.:

On July 23, 2012, I heard oral argument on defendants' motion for summary judgment to dismiss certain cases. The motion is granted, subject to the conditions described below.

The first category of cases is made up of 31 plaintiffs, identified in Exhibit A. Plaintiffs failed to swear to their answers to court-ordered interrogatories by the much-extended, required date of December 2, 2012. These plaintiffs are in precisely the same situation as 170 other plaintiffs who failed to file such proper certifications, plaintiffs whom I dismissed by order of December 8, 2011. For the same reasons put forth in that order, I dismiss these 31 plaintiffs. Should these plaintiffs wish to move to open the judgment dismissing their cases, they must file proper motions by August 24, 2012 showing a ground provided by Rule 60(b), Fed. R. Civ. P. I shorten the time for filing such motions because of the several prior motions and extensions given to plaintiffs, and since it is necessary to coordinate discovery relative to all parties in order to avoid prejudice and delay.

The second category of cases is made up of those plaintiffs who, under oath, answered "None" to the court-ordered interrogatory asking "[f]or which diagnosed condition(s)/injury(s)/disease(s) does [Plaintiff] seek recovery?" Plaintiffs may not create an

issue of fact, after the filing of defendants' motion, by disputing prior sworn statements. Trans-Orient Marine Corp. v. Star Trading & Marine, Inc., 925 F.2d 566, 572 (2d Cir. 1991). Nor are claims for "medical monitoring" or fear of cancer stand-alone causes of action if there is no "clinically-demonstrable presence of a toxin in the plaintiff's body, or some other indication of a toxin-induced disease." DiStefano v. Nabisco, Inc., 2 A.D.3d 484, 485 (N.Y. App. Div. 2d Dep't 2003); Abusio v. Consolidated Edison Co., 238 A.D.2d 454 (N.Y. App. Div. 2d Dep't 1997). Defendants shall settle an order identifying the plaintiffs affected by this order, and both sides shall submit same by August 8, 2012.

The clerk shall close the docket numbers identified in Exhibit A.

SO ORDERED

Dated: July 25, 2012
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge

| # | Last | First | Docket | Counsel |
|----|-------------|---------------|-----------|------------------------------------|
| 1 | Acevedo | Carmelo | 07cv01453 | Worby Groner Edelman & Napoli Bern |
| 2 | Agudo | Claudio | 07cv04447 | Worby Groner Edelman & Napoli Bern |
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| 9 | DeLucy | Louis | 07CV05285 | Worby Groner Edelman & Napoli Bern |
| 10 | Eramo | Joseph | 06cv14632 | Worby Groner Edelman & Napoli Bern |
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| 12 | Ferraro | Kenneth | 06CV12062 | Worby Groner Edelman & Napoli Bern |
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SOUTHERN DISTRICT OF NEW YORK

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LITIGATION
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DENISE A. RUBIN, an Attorney duly licensed to practice before the Courts of the State of New York and a member of the Bar of this Honorable Court, hereby Declares under penalty of perjury:

On August 16, 2012, I duly served a true copy of the within NOTICE OF APPEAL on the persons listed below by e-mail transmission.

Lee Ann Stevenson
Kirkland & Ellis, LLP
601 Lexington Avenue
New York, NY 10022
leeann.stevenson@kirkland.com

Richard E. Leff
McGivney & Kluger, P.C.
80 Broad Street, 23rd Floor
New York, New York 10004
rleff@mcgivneyandkluger.com

And upon all parties receiving electronic notification via the US District Court's ECF filing system


DENISE A. RUBIN

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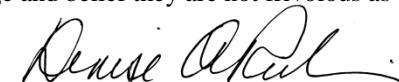
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WORBY GRONER EDELMAN & NAPOLI BERN, LLP

Counsel for Plaintiffs-Appellants
350 Broadway, Suite 7413
New York, New York 10118
(212) 267-3700

===== The undersigned attorney hereby certifies, pursuant to Fed. R. Civ. P. 11 and 22 NYCRR §130-1.1-a, that I have read the within papers and that to the best of my knowledge and belief they are not frivolous as that term is defined in 22 NYCRR § 130-1.1(c) and Fed. R. Civ. P. 11.



Attorney name: Denise A. Rubin

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of an _____ duly entered in the _____ office
of the clerk of the within named court on _____ 200____.

NOTICE OF SETTLEMENT

that an order _____ of which the within is a true copy, will be
presented for settlement to the HON. _____ one of the judges of the
within named Court, at _____ on _____ 200____ at _____ O'clock _____.M.

Dated, _____

Yours, etc.

WORBY GRONER EDELMAN & NAPOLI BERN, LLP